

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Bell Communications
for a Certificate of Public Convenience and
Necessity to Provide InterLATA, IntraLATA
and Local Exchange Telecommunications
Services Within the State of California,

Application No. 96-03-007

California Telecommunications Coalition and
Association of Directory Publishers Joint
Protest to Application of Pacific Bell
Communications for a Certificate of Public
Convenience and Necessity to Provide
interLATA, intraLATA and Local Exchange
Telecommunications Services

Pursuant to Rules 8.1 and 44, *et seq.* of the California Public Utilities
Commission's Rules of Practice and Procedure, each member of the California
Telecommunications Coalition ("Coalition" or "CTC") identified below¹ protests the application
filed by Pacific Bell Communications ("PB Com") for a certificate of public convenience and

¹ Each CTC member joining this Protest separately protests the Application on the grounds set forth in this filing and seeks to become an independent party to the proceeding. For the convenience of the Commission and others, the grounds for protest are stated in this single joint document. The Coalition members joining this Joint Protest are AT&T Communications of California, Inc.; California Association of Long Distance Telephone Companies; California Cable Television Association; MCI Telecommunications Corp.; Sprint Communications Co., L.P.; Teleport Communications Group; and Toward Utility Rate Normalization. While not a member of the Coalition, the Association of Directory Publishers also joins in this protest and seeks to become an independent party to this proceeding. More information about these entities is provided in section II, below.

necessity ("CPCN") to provide interLATA, intraLATA and local exchange services.² The broad authority sought in the application should not be granted. The Coalition also requests that public hearings be scheduled on this application pursuant to Commission rules and Public Utilities Code section 709.2.

I. INTRODUCTION

In a mere eight page application, PB Com, a new, wholly owned subsidiary of Pacific Telesis and the sibling of the state's dominant local exchange carrier, Pacific Bell, seeks authority to provide "a full range of facilities-based and resold telecommunications services, including without limitation, interLATA, intraLATA and local exchange telecommunications services throughout the State of California." PB Com App. at 2. In spite of its affiliation with Pacific Bell, PB Com also asks to be treated as a non-dominant carrier.

The application raises important and complex questions. The issues they pose will have to be identified, addressed, and resolved before even *any* CPCN is granted to PB Com or any other affiliate of Pacific Bell seeking to provide interLATA services originating in California ("in-region services"). PB Com's application, instead of identifying the issues and addressing them head-on, brushes aside or ignores them. Indeed, the premature application is so vague and the authority sought so vast that just identifying all the issues it raises will be a difficult task.

PB Com brazenly states its readiness to demonstrate in this proceeding that it satisfies all state and federal prerequisites to entry by an affiliate of a Bell Operating Company into in-region interLATA markets. The transparent effort to portray the application as a simple matter by making it short should be rejected. Indeed, this proceeding may be one of the most difficult that the Commission has yet to consider.

² Notice of this application appeared on the Commission's daily calendar on March 6, 1996.

Among the questions that will have to be addressed before any CPCN issues to PB Com are:

- Whether the state law prerequisites to Pacific Telesis' entry into California's interLATA telecommunications markets have been satisfied.
- Whether federal prerequisites to such entry have been satisfied.
- Whether all necessary parties have been joined.
- Whether it is appropriate to treat PB Com as a non-dominant carrier.
- Whether PB Com can be used to evade proper Commission regulation of Pacific Bell.

These issues are more fully developed in section IV, below.

Because of these serious issues and the application's failure to address them, the Coalition respectfully requests that this Commission order hearings on the application to fulfill its obligations under state and federal law. Indeed, the Commission should consider dismissing the application or holding it in abeyance as premature. Any CPCN ultimately issued should be conditioned and limited to protect this Commission's on-going regulatory jurisdiction, California's telecommunications consumers, and the process of competition in telecommunications markets.

II. IDENTITY OF PROTESTANTS AND COUNSEL

Each below identified member of the Coalition is sponsoring this protest and requests that it be a party to this proceeding. The Coalition members are:

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III. FACTUAL BACKGROUND

A brief overview of events leading to PB Com's application is helpful for understanding some of the questions raised by it.

A. The Line Of Business Restrictions On Pacific Bell

PB Com is a recently created, wholly owned subsidiary of Pacific Telesis. The latter company, while incorporated in Nevada, "has provided telecommunications services to residents of the State of California since 1906." App. at 1-2. Until the early 1980's, the vast majority of telecommunications services in California were provided by the Bell System, which included AT&T and Pacific Bell's predecessor, Pacific Telephone. In 1982, in connection with settlement of a Department of Justice antitrust suit, the federal district court entered the Modification of Final Judgment ("MFJ") under which AT&T agreed to divest itself of its local telephone companies, including Pacific Telephone. Pacific Telesis and other divested operating companies were established as seven Regional Bell Operating Companies ("RBOCs") under the MFJ.

The MFJ provided that RBOCs could not offer long distance service (defined as service between local access and transport areas or LATAs), could not provide information services and could not manufacture communications equipment. These "line of business" restrictions could only be lifted under the decree if the RBOC established that "... there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter." *United States v. AT&T*, 552 F. Supp. 131, 231 (D.D.C. 1982). Since the MFJ, no RBOC has satisfied this test to justify an exemption from the line of business restriction on interLATA service. The Telecommunications Act of 1996 has replaced the MFJ restrictions and made more specific the conditions under which the BOCs can enter these lines of business.

B. The Costa Bill

The California legislature sought to establish a California specific test for telecommunications competition. The result was the passage in 1994 of legislation now codified in California Public Utilities Code section 709.2 (the "Costa Bill"). In substance, the legislature directed the Commission to "order the opening of all intrastate interexchange telecommunications markets to full competition" and to order, no later than October 1, 1995, that

Pacific Bell seek a federal judicial exemption from the restrictions of the MFJ. The Costa Bill, however, also contained safeguards in the form of prerequisite findings that the Commission must make following evidentiary hearings before any Commission order authorizing or directing Pacific Bell entry into "intrastate interexchange telecommunications" could be implemented. Those include the requirement of section 709.2(c) for Commission determinations "pursuant to the public hearing process" that:

- there is "fair, nondiscriminatory, and mutually open access to exchanges,"
- there is "no anticompetitive behavior" by the local exchange carrier³,
- there is "no cross-subsidization of intrastate interexchange service by requiring separate accounting records to allocate costs for the provision of intrastate interexchange telecommunications service and examining the methodology of allocating those costs,"
- and there is "no substantial possibility of harm" to competitive intrastate interexchange telecommunications markets from LEC entry.

Cal. Pub. Util. Code § 709.2(c). The Commission must satisfy itself that these safeguards have been met before granting any Pacific Telesis affiliate a certificate to provide interLATA telecommunications services in California markets. Indeed, the Commission is on record as stating that it intends to exercise the discretion given to it by the legislature. *Re Alternative Regulatory Framework For Local Exchange Carriers*, D. 95-09-072, mimeo at 4.

C. The Telecommunications Act of 1996

Nearly two years after the Costa Bill became law, the Telecommunications Act of 1996 ("TA96" or "the Act") was enacted by the federal government. As the Commission knows, that law sets forth a comprehensive federal framework for the transition of local

³ "[I]ncluding unfair use of subscriber information or unfair use of customer contacts generated by the local exchange telephone corporation's provision of local exchange telephone service."

telecommunications markets to a competitive form, replaces the MFJ, and places new, additional requirements on the Commission not contemplated by the Costa legislation. It also imposes new and separate requirements for the provision of in-region interLATA services by Bell Operating Companies ("BOCs"), one of which is that such services be provided through a separate subsidiary. TA96 § 151 (section 272(a)).

The Act provides for the development of local exchange competition as a first step in the transition to competitive telecommunications markets. After facilities-based local competition is achieved, separate affiliates of the BOCs, such as PB Com, are then permitted to seek Federal Communications Commission ("FCC") authority to provide in-region interLATA services. TA96 § 151 (section 271(d)). As a part of this process, the FCC will consult with this Commission to "verify" that Pacific Bell has complied with the "competitive checklist" prerequisites for providing "in-region" interLATA services. *Id.*, (section 271(d)(2)(B)). The FCC will also consult with the United States Attorney General on a BOC's application to provide in-region interLATA service. *Id.*, (section 271(d)(2)(A)).

1. **The Act compels and provides a process for creating competition for local exchange services.**

The Act sets forth a comprehensive scheme to introduce competition in the nation's local exchange markets. To accomplish this end, section 251 of the Act imposes obligations on all local exchange carriers on the subjects of resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and additional obligations on incumbent local exchange carriers like Pacific Bell on the topics of interconnection arrangements, unbundled access, resale, collocation and other items. *See*, TA96 § 101(a) (section 251(b) and (c)).

The Act also creates a process under which incumbents like Pacific Bell must negotiate interconnection arrangements with their competitors. This process includes provisions for mediation or arbitration by this Commission at the request of any negotiating party, and it also requires Commission approval of the agreements under standards set forth in the Act. In

addition, TA96 provides a competitive check list which is used to evaluate the interconnection agreements between incumbent local exchange carriers and competitors. The items on the check list are numerous and include nondiscriminatory interconnection; unbundled access to network elements; unbundled local loops, transport and switching; nondiscriminatory access to 911, directory assistance, operator assistance, telephone numbers for assignment and databases; and numerous other items.⁴

The process specified in TA96 ensures that BOCs face local exchange competition *before* they enter interLATA markets by:

- (1) requiring the negotiation of agreements for BOC services to local exchange competitors,
- (2) establishing minimum requirements of such agreements, including the "competitive checklist" and requiring *this Commission* to determine that the criteria are satisfied (TA96 § 101(a), section 252(e)), and
- (3) requiring that a BOC affiliate show that the BOC "is providing access and interconnection to its network facilities" to a facilities-based local exchange competitor under TA96 agreements in order to obtain authority to offer in-region interLATA services. TA96 § 151 (sections 271(c)(1)(A) and 271(d)(3)).

Before it may be permitted to provide in-region long distance service, Pacific Bell must provide exchange access service based on the cost of providing such access, consistent with sections 251(c)(2) and (3) and section 252(d)(1) of TA96.⁵

⁴ The complete checklist is set forth in section IV.A.2.c, below.

⁵ TCG and CCTA do not support this assertion and believe that the FCC will determine the applicability of sections 251(c)(3) and 252(d)(1) to exchange access services.

2: TA96 Requires Separation Of A BOC From An Affiliate Offering In-Region InterLATA Services.

As noted above, the Act requires that in-region interLATA services be provided through a subsidiary separate from the BOC. It also requires a high degree of separation between a BOC and this affiliate. The entities, for example, must maintain separate books, officers, employees and directors; and affiliate finances cannot be secured with BOC assets. TA96 § 151 (section 272(b)). Moreover, BOCs are prohibited from discriminating between their affiliates and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and they must account for all transactions with affiliates in accordance with FCC approved accounting principles. *Id.*, (section 272(c)). Additional requirements, such as biennial audits, nondiscrimination requirements regarding the fulfillment of certain requests for goods and services made by an affiliate to the BOC, and joint marketing restrictions are also spelled out in detail in the text of the Act. *Id.* (section 272(d)-(h)).

D. The Timing Of Commission Action

The only state legislative direction on the *timing* of Commission action on matters involving new competition is set forth in California Public Utilities Code section 709.5. Subsection (c) requires that the Commission expedite pertinent dockets so that "*rules and regulations* that may be necessary to achieve fair *local exchange* competition" are in place "no later than January 1, 1997." (emphasis added) That requirement has no impact on this docket.

As to interexchange competition, no deadlines are set by state law. Section 709.5(a) (the "Moore Bill") expresses the "intent" of the legislature that all markets "subject to Commission jurisdiction be opened to competition not later than January 1, 1997." InterLATA interexchange markets, however, were already open to competition when that legislation passed in 1994 and remain open today. The intraLATA interexchange markets were opened to limited competition on January 1, 1995 and will become more fully competitive when equal access is ordered and implemented. *See, Re Alternative Regulatory Framework for Local Exchange*

Carriers, D. 94-09-065, mimeo at 335. The timing of Commission action on the PB Com application is thus not affected by the Moore Bill.

Moreover, state legislation does not require that Pacific Telesis conduct interLATA services in California through a subsidiary separate from Pacific Bell. Instead, the Costa Bill merely calls for "separate accounting records" and a Commission examination of the "methodology of allocating" costs between interexchange telecommunications and other services. Use of a separate subsidiary is a requirement of federal not state law. Thus, the timing for approval of the present application is not dictated by state law.

IV. ISSUES RAISED BY THE APPLICATION AND THEIR EFFECT ON THE COALITION AND CALIFORNIA TELECOMMUNICATIONS CONSUMERS

PB Com's application raises numerous and varied issues that must be addressed before any CPCN can issue from the Commission. All will need to be resolved in advance of the requested authority being granted. Where and when these various issues will be resolved should be the subject of the prehearing conference.

It is beyond question that this Commission can review PB Com's application and take steps it deems necessary to safeguard the public interest. In addition to the specific state statutes granting this Commission such authority (*see, e.g.*, Cal. Pub. Util. Code § 1001), TA96 also gives this Commission the right to fully review and address the issues raised in the application. In addition to the previously mentioned oversight roles that TA96 assigns, the Act also states that the Commission can impose requirements necessary to "... protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." TA96 § 101(a) (section 253(b)). This Commission's role in this proceeding is much more than ministerial, and the Commission should evaluate PB Com's request under the traditional standards that it has always applied in proceedings such as this as well as the newer Costa and TA96 criteria.

A. The Legislative Prerequisites To BOC Entry Into California's InterLATA Markets Must Be Satisfied Before Any Certificate Is Issued To PB Com.

PB Com's application makes only glancing references to the numerous requirements spelled out in the Costa Bill and TA96, requirements that must be met before any affiliate of Pacific Bell is permitted to provide long distance service originating in the state of California. The statutory standards in the Costa Bill serve to elucidate some of the ultimate "public interest" considerations to be applied to this application. Similarly, the detailed requirements of TA96 also serve to provide concreteness and guidance in applying both the "public interest" standard and the broader standards of the Costa Bill.

1. The Costa Bill imposes obligations on the Commission which must be satisfied before it grants any CPCN to PB Com.

As mentioned above, the Costa Bill imposes requirements that must be satisfied before PB Com can be permitted to compete in California's interLATA markets. It spells out four express findings to be made by the Commission after public hearings before PB Com can be authorized to enter California's interexchange markets.

a) The Commission must determine that open access to Pacific Bell's exchanges exists.

For one, the Costa Bill requires this Commission to determine that "all competitors have fair, nondiscriminatory, and mutually open access to exchanges currently subject to the modified final judgment and interexchange facilities, including fair unbundling of exchange facilities, as prescribed in the Commission's Open Access and Network Architecture Development Proceeding" (hereafter "OANAD"). Cal. Pub. Util. Code § 709.2(c)(1). To the extent that this "fair, nondiscriminatory, and mutually open access" requirement raises issues not already under review in OANAD, those should be identified and set for hearing. That PB Com's application is premature is also evident in that it will be impossible to determine whether Pacific Bell is in compliance until a decision in the OANAD proceeding is implemented.

b) The Commission must expressly find that Pacific Bell is not engaging in anticompetitive behavior.

The Costa Bill also directs this Commission to determine "that there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber information or unfair use of customer contacts generated by the local exchange telephone corporation's provision of local exchange telephone service." Cal. Pub. Util. Code § 709.2(c)(2). The examination required by this directive, in the context of the "public interest" standard of this application, is broad. The anticompetitive behavior of concern is not limited to the recent past but includes likely operations after entry into interLATA markets.

First, by its terms, the statute requires inquiry into access by PB Com and others to information contained in directory assistance and other Pacific Bell data bases. Provision must be made for fair and equal access to such information by PB Com's competitors and safeguards must be developed to prevent informal access to such information by PB Com.

Beyond these issues, however, the broad authority sought by PB Com raises a host of concerns. The Application is silent as to how PB Com and Pacific Bell will compete in those markets in which both would have the authority to participate. Nothing in TA96 requires that the separate subsidiary needed to offer interLATA service must also participate in other markets, such as the local exchange market. Pacific Telesis has elected to seek broader authority for this new subsidiary than compliance with the federal act requires. The logical question is why. Issues raised by this inquiry include the following:

- Does PB Com need the broad authority it requests or should its CPCN be limited to the provision of interLATA services?
- Alternatively, should Pacific Bell be required to offer all retail services through PB Com, becoming solely a wholesale provider of service to that and other competing carriers?
- Will Pacific Bell and PB Com be competing or agreeing on price for the same customers?

- Will responsibility for serving classes or groups of customers be divided between the two entities, either geographically or by type of service?
- Will PB Com be used as a vehicle for Pacific Bell to ignore and avoid the pricing flexibility, geographic deaveraging and bundling safeguards decided in D. 96-03-020?
- Will more profitable services be allocated to PB Com, with an eye toward a future spin-off?
- Will customers be able to select which entity serves them?
- How will the responsibilities and opportunities to construct new facilities be allocated between these entities?

Aside from these issues about the operations of PB Com and its effect on competition by Pacific Bell, there is evidence that Pacific Bell has in the recent past acted to frustrate the commencement of competition in intraLATA toll and other markets by a program of inducing customers to enter into long term contracts with Pacific. Tactics employed in this process have included favorable pricing, and the refusal to implement FRS/ARS switching for Centrex customers in the first year of intraLATA toll competition.⁶

Pacific Bell has also abused its authority as "administrator" of the valuable telephone numbering resource for anticompetitive purposes. It continues to advocate its anticompetitive overlay plan for the relief of area codes in California despite the Commission's prior rejection of such a proposal. The issues surrounding area code relief planning were thoroughly addressed by the Commission in a 1995 complaint proceeding involving relief planning for the 310 area code (in Los Angeles). In that proceeding, the Commission found that

⁶ As this Commission has previously noted, the risk of competitive abuse is at its greatest when a monopolist confronts competition in the market for the first time. *MCI Telecommunications Corp. v. Pacific Bell*, D.95-05-020, mimeo at 39 (preliminary injunction issued by Commission which prohibited Pacific Bell from refusing to route intraLATA toll calls of its Centrex customers with FRS/ARS routing features to the intraLATA toll carrier of the customer's choice).

Pacific's overlay plan was anticompetitive. The Commission found further that the anticompetitive features could not be mitigated without the development of permanent local number portability and mandatory 1+ ten-digit dialing. Despite these findings, Pacific Bell continues to advocate in industry fora anticompetitive overlay "solutions." As a result, several parties have filed complaints and other pleadings with the Commission, urging it to step in and address Pacific Bell's disruptive, and anticompetitive, approach to these issues.

A singularly important and valuable byproduct of Pacific Bell's monopoly local exchange business is its access to and use of subscriber information. Section 709.2(c)(3) recognizes this fact and the control which Pacific and its affiliates exert over assembling, maintaining, manipulating and disseminating such information, and the potential for anticompetitive conduct in that regard. It directs that the Commission affirmatively find that no anticompetitive use of subscriber information or unfair use of customer contacts can or does occur. As a result of the Commission's adoption of local rule J in Appendix E of Dec. 96-02-072, Pacific Bell will continue to be a gatekeeper of such information due to the inclusion of CLC customer information in Pacific's databases and published directory. Given this extraordinary position of control, the Commission's determination of fair use of subscriber information must include review of the current practices of Pacific Bell and its affiliates vis a vis the provision of such information to CLCs and other information providers such as independent directory publishers. Likewise, it must also include careful analysis of the manner in which such information may be shared or utilized by PB Com to make sure that PB Com is not treated more favorably than other CLCs in the access to, and the rates, terms and conditions upon which, such information is accorded PB Com. In other words, if PB Com is found to be a true separately structured affiliate of Pacific Bell, it can not be accorded privileges or preferences merely because of its affiliation with Pacific Bell in the access and use of subscriber information and contacts.

- c) **Cross-subsidization is forbidden and the Commission must determine that no such activity is taking place.**

The Commission must, under the Costa Bill, determine that there is no improper cross-subsidization of interexchange service in California by requiring separate accounting records that allocate the costs for providing interexchange service and reviewing the methodology of cost allocation. Cal. Pub. Util. Code § 709.2(c)(3). Since Pacific Bell has elected to submit a CPCN request for a separate subsidiary, presumably the requirement of separate accounting records will be non-controversial. However, the breadth of the PB Com application raises significant issues regarding the methodology of cost allocation. To the extent that PB Com offers services in the same markets served by Pacific Bell, what methodology will be used to allocate costs between the two companies, particularly where PB Com offers service that is in part facilities-based? The application ignores this thorny problem.

- d) **This Commission must determine that there is no chance of any competitive harm to competition in interexchange markets.**

Finally, this Commission must determine that "there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications markets." Cal. Pub. Util. Code § 709.2(c)(4). This inquiry, obviously, is extremely broad and its complexity is increased by the breadth of the authority sought by PB Com. The Commission will need to determine that Pacific Bell cannot use its control of the local bottleneck and its market power to impede competition. This inquiry raises numerous questions, including: How will PB Com market its services in combination with those offered by Pacific Bell? What, if any, facilities will be transferred to PB Com from Pacific Bell to enhance its capabilities in interexchange markets? Will PB Com own any of the new facilities presently being constructed?

2. Affiliates of Pacific Telesis must satisfy the requirements of TA96 before any CPCN is properly issued to PB Com.

TA96 requires that certain steps be taken to open local exchange markets to competition before any BOC affiliate will be permitted to enter the interLATA markets and requires the Commission to verify that some of these steps have been taken. The Commission should satisfy itself that its TA96 obligations are completed before any CPCN is granted to PB Com. In addition, where Costa requirements may be elaborated or given further development in the provisions of TA96, such as in the requirements for a separate subsidiary to conduct interLATA services, the Commission should look to the Act to guide its inquiry.

a) This Commission must approve an interconnection agreement between Pacific Bell and another carrier before granting a CPCN to PB Com.

Before PB Com can operate in California interLATA markets, its sibling Pacific Bell must have complied with the requirements of section 271(c) of TA96, including the successful negotiation or arbitration of agreement(s), meeting the requirements of the Act, under which Pacific Bell "is providing access and interconnection" to a facilities-based competitor that is providing service to residential and business customers exclusively or predominantly over that competitor's own facilities. TA96 § 151 (section 271(c)(1)(A)).

Several things need to happen before any Pacific Telesis affiliate can establish this prerequisite. For one, before it can be determined that Pacific Bell has complied with its access and interconnection obligations, the FCC must establish the necessary rules on these topics. The FCC has six months following enactment (or until early August 1996) to establish regulations to implement the requirements of section 251, a section that spells out the obligations of all local exchange carriers on the subjects of resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and the additional obligations of incumbent carriers like Pacific

Bell regarding interconnection arrangements, unbundled access, resale, collocation and other items. *See*, TA96 § 101(a) (section 251(b) and (c)).

In addition, Pacific Bell must, on request, negotiate agreements for interconnection and network elements with other carriers seeking to provide local exchange service. *See*, TA96 § 101(a) (section 252(a)(1)). This Commission could also be called by one of the parties to the negotiations to mediate, and arbitrate, any differences between the parties, as discussed previously. *See*, TA96 § 101(a) (section 252(a) and (c)).

Whether adopted by negotiation or arbitration, all agreements must be submitted to this Commission for approval or rejection. If an agreement (or portion thereof) was reached solely by negotiation, then the Commission must determine whether that agreement or portion discriminates against any non-party telecommunication carriers and whether it is consistent with the public interest, convenience and necessity. TA96 § 101(a) (section 252(e)(2)(A)(i)-(ii)). Even if an agreement or portion was arbitrated, the Commission could reject the agreement or portion if it did not meet the requirements of section 251. TA96 § 101(a) (section 252(e)(2)(B)).

It is, of course, impossible to tell at this early stage whether Pacific Bell will timely negotiate interconnection agreements under these provisions; and other than blithely suggesting that everything will move quickly, PB Com's application does not even try to predict whether, or when, Pacific Bell will confront facilities-based competition. However, until that hurdle is satisfied, PB Com's request for a CPCN cannot be granted because prerequisites for its lawful operation will not have been met.

b) Pacific Bell must face facilities-based competition before PB Com can enter the interLATA market.

The Act explicitly conditions entry by BOC affiliates into the interLATA market. Such entry can occur only after the BOCs have opened their local exchange markets to competition. A BOC must start the process by filing an application with the FCC seeking authorization to provide in-region interLATA services through an affiliate. If the BOC seeks to

provide interexchange service originating in any in-region state (*i.e.* Pacific Bell from inside California), the FCC will determine whether the BOC faces a facilities-based competitor who is actually serving both business and residence customers and with whom it has negotiated or arbitrated an interconnection agreement that has been approved by this Commission. TA96 § 151 (section 271(c)(1)(A)). Before allowing the BOC to offer interLATA service, the FCC will consult with this Commission to ensure that the BOC has complied with the requirements of section 271(c), and it will also consult with the United States Department of Justice, which can evaluate the proposed BOC interLATA service using any standard it thinks appropriate.

PB Com's sketchy application ignores the numerous steps that must be followed before it can be authorized to supply interLATA service. Its application also ignores the competitive checklist that its corporate affiliate's agreements must meet before PB Com can handle a single interLATA call.

- c) This Commission will have to determine that Pacific Bell has complied with TA96's competitive checklist before PB Com is granted a certificate.**

Under the Act, the FCC will consult with this Commission to ensure that any interconnection agreements accepted by Pacific Bell, or made generally available, satisfy a competitive checklist. The checklist requires that Pacific Bell offer:

- (i) interconnection at nondiscriminatory, just and reasonable rates;
- (ii) unbundled nondiscriminatory access to network elements;
- (iii) nondiscriminatory access to poles, ducts, conduits and rights of way;
- (iv) unbundled, local loops;
- (v) unbundled local transport;
- (vi) unbundled local switching;
- (vii) nondiscriminatory access to 911, directory assistance and operator assistance;
- (viii) white page directory listings;

- (ix) nondiscriminatory access to telephone numbers for assignment;
- (x) nondiscriminatory access to databases;
- (xi) local number portability;
- (xii) nondiscriminatory access to information for local dialing parity;
- (xiii) reciprocal compensation arrangements (including bill and keep); and
- (xiv) resale offerings of telecommunications services at wholesale rates.

TA96 § 151 (section 271(c)(2)(B)(i)-(xiv)).

Accordingly, PB Com's request to provide all types of telecommunications services is not as simple as its application indicates. Rather, before PB Com can provide any interLATA service, this Commission will have to carefully scrutinize Pacific Bell's interconnection agreements, and consult with the FCC about whether the checklist is satisfied.

- d) PB Com must also demonstrate that it has satisfied TA96's separate affiliate safeguards to this Commission.**

Section 272(b) of TA96 sets forth structural and transaction requirements that must be observed. These requirements are discussed below.

(1) Separate and independent operations.

TA96 section 272(b)(1) states that the separate affiliate "shall operate independently from the Bell operating company." This requirement must be satisfied before PB Com can provide interLATA service originating in California. PB Com's application indicates only that it envisions a separation "beyond" the requirement of separate accounting records. Moreover, PB Com's application lists its principal place of business as 140 New Montgomery Street in San Francisco. That address also houses the "Company Headquarters" for Pacific Bell according to Pacific Bell's own White Pages. This shared real estate arrangement obviously flies in the face of TA96. The arrangements proposed in PB Com's application are unquestionably inadequate; stringent and concrete separations must be required, including prohibitions on sharing of personnel, equipment, offices and telecommunications facilities.

(2) Separate books.

TA96 also directs that the separate affiliate "shall maintain books, records and accounts in the manner prescribed by the [Federal Communications] Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate." TA96 § 151 (section 272(b)(2)). Thus, the FCC will have to develop the requisite rules for this requirement before PB Com can provide interLATA service in California. It would be prudent for this Commission to consider the FCC's rules before making the determination required of it by the Costa Bill on this same subject. The need for the FCC to take the first step again points out the fact that PB Com has jumped the gun with this application.

(3) Separate officers and employees.

Subsection 3 of the same provision states that the affiliate (here PB Com) "shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate." This requirement identifies with concreteness some of the issues raised by the more general Costa Bill inquiry into the "methodology" of cost allocations between PB Com and Pacific Bell. Exhibit G is as close as PB Com comes in its application to trying to show that PB Com's operations are distinct from those of other Pacific Telesis affiliates, and that effort raises grave concerns. Exhibit G only lists four officers all of whom were, and may still well be on the payroll of Pacific Bell. Indeed, it is unclear from the descriptions whether these individuals have left Pacific Bell at this time or whether they have more than one job. Revealingly, all four individuals have relevant experience only in marketing: Ms. Bernard was a Pacific Bell marketing vice president for business communications; Mr. Juul is described as having a marketing background; Mr. Miller, prior to this "assignment," was an account vice president for Pacific Bell; and Mr. Soffman temporarily manages PB Com's marketing organization and never appears to have left Pacific Bell.

There seems to be little experience in accounting and finance matters among the key officers. The application also does not reveal whether there are any employees at PB Com,

nor is there any mention of plans to hire any. Would employees be “borrowed” from Pacific Bell when needed? TA96 demands separate personnel and PB Com must be made to comply before entering California’s long distance markets. This separation is an appropriate issue in this proceeding.

(4) No credit secured by Pacific Telesis assets.

Subsection 4 of the identical provision requires that the affiliate “may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company.” This federal requirement renders unacceptable the reliance in the PB Com application on Pacific Telesis financial statements and guarantees. Indeed, the proposed transaction with SBC Communications will eliminate Pacific Telesis. PB Com should have independent assets. Whether the Commission should impose any disclosure requirements or other requirements with regard to PB Com’s credit arrangements before granting the requested authority is also an issue here and ought to be taken up in this proceeding.

(5) Arms-length transactions.

The last requirement, subsection five, directs that the affiliate “shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm’s length basis with any such transactions reduced to writing and available for public inspection.” This requirement raises an important issue which must be addressed in this docket. PB Com’s application alleges a readiness to comply with the Commission’s affiliate transaction rules. While that is a modest start, other steps must be implemented to ensure that competitors are on the same playing field with PB Com when it comes to conducting business with Pacific Bell. Reducing agreements between PB Com and Pacific Bell to writing and making them available for public inspection is helpful, but PB Com’s application fails to mention how this requirement will be implemented to insure timely distribution of information. In addition, other safeguards should be considered to ensure that such transactions are truly “arm’s length” and to prohibit PB

Com from taking advantage of any new arrangement with Pacific Bell until some period after public notice of its general availability.

e) Nondiscrimination safeguards (Section 272(c))

PB Com's application is devoid of any commitment by Pacific Bell to provide goods and services to PB Com's competitors under the same terms that it provides to PB Com. Under the Act, however, Pacific Bell is also prohibited from discriminating between its affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and it must account for all transactions with an affiliate in accordance with FCC approved accounting principles. TA96 § 151 (section 272(c)).

f) Fulfillment of certain requests. (section 272(e))

Additional requirements, such as biennial audits, nondiscrimination requirements regarding the fulfillment of certain requests for goods and services made by an affiliate to the BOC, and joint marketing restrictions are also spelled out in detail in the text of the Act. *Id.* (section 272(d)-(h)). Unless these requirements are satisfied as well, PB Com has no business competing in California's interLATA markets.

B. The Application Should Be Denied Because PB Com Did Not Join All Parties That Are Necessary To Grant The Requested Authority

PB Com has the burden in this proceeding of demonstrating that it has satisfied all applicable legal and regulatory requirements before its application can be granted, including the conditions set forth in the Costa Bill and TA96. PB Com has done almost nothing to make this showing here. Indeed, its application even failed to include Pacific Bell and Pacific Telesis as parties. As the above review of the requirements of federal and state law demonstrates, this Commission will need to make specific findings about the actions and operations of Pacific Bell before it can expressly determine, for example, that "there is no anticompetitive behavior by the local exchange telephone corporation." Yet, Pacific Bell is not a party to this proceeding and such a finding will be impossible in this docket unless Pacific Bell is included.

PB Com's effort to paint this proceeding as another routine application by a new entity seeking to provide intraLATA and interLATA service as a competitive local carrier is nonsensical. The very authority sought in the application has been the subject of endless legal battles in federal court and before this Commission during the past decade, as well as the subject of hard-fought legislative debate at both the federal and state level. It is anything but routine and it is going to require considerable expenditure of resources on the part of this Commission and the parties.

C. PB Com's Request To Be Treated As A Non-Dominant Carrier Raises Numerous Issues That Will Need To Be Examined At Hearing

PB Com in its application "seeks the full extent of authority allowed by the Commission as a non-dominant carrier." App. at 1. Indeed, PB Com goes so far as to request that it be exempt from the requirements of Public Utilities Code section 816-830 and 851-855. *Id.* at 7. The request must be denied. In seeking exemption from sections 816-830, PB Com seeks to avoid any Commission supervision of the stock it issues, as well as any supervision and review of PB Com's indebtedness, including bonds, notes and liens. If there were an exemption, the Commission would also be unable to make PB Com account for the disposition of the proceeds from the sales of stock, as well as those arising from bonds, notes and other debts. To take such a step with an affiliate of both Pacific Telesis and Pacific Bell when that affiliate has been designated to be the Pacific Telesis family's long distance market entrant (as well as an entrant in all telecommunications markets) would be dangerous.

In seeking an exemption from sections 851-855 of the Public Utilities Code, PB Com would like the right to sell, lease or encumber any and all of its property without even having to notify this Commission, let alone seek its approval. It would also like to be able to purchase, take or hold the stock of any other public utility without having to notify this Commission of that transaction, let alone get approval. Exemption from section 854 would allow any entity or person to acquire control of PB Com without notifying the Commission and